Mississippi Office of the State Auditor

Audit Response Team

Report to the State Auditor

Mississippi Workers' Compensation Commission

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Project 2004-01

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EXECUTIVE SUMMARY

The Audit Response Team was assigned by the State Auditor to perform a review at the Mississippi Workers' Compensation Commission (MWCC) in response to a referral from the Joint Legislative Committee on Performance Evaluation and Expenditure Review (PEER). In its report dated November 18, 2003, PEER recommended the Office of the State Auditor "conduct an audit of the MWCC's leave records to ensure that Commissioners (as well as other employees) have properly accounted for their time away from MWCC offices." The report also recommended that corrective action should be taken by the State Auditor, if necessary.

The Audit Response Team conducted field work at the MWCC office on January 7 and 8, 2004, to determine whether policies and procedures for time and leave accounting for all Commissioners and employees have been adopted and followed. This field work consisted of analyzing documents, and interviewing Commissioners and key personnel relating to these matters.

Based upon our field work performed we found the following:

- There are no written policies and procedures currently in place for accounting for time and leave of Commissioners and employees.
- The three MWCC Commissioners do not report personal or sick leave taken.
- Personnel actions have been taken without the approval of the full Commission.
- Administrative Judges and Court Reporters employed by the Commission were not required to document their time in a manner that would provide accountability for time worked.

We recommend the MWCC adopt written policies and procedures for time and leave accounting for all Commissioners and employees of the agency, and that Commissioners report leave they take. Additionally, we recommend the full Commission perform its duties with regard to personnel actions.

The Chairman of the MWCC, Ben Barrett Smith, as well as Commissioners Lydia Quarles and Barney Schobey have indicated a willingness to work with the State Auditor in correcting these matters.

Audit Response Team Members

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BACKGROUND AND METHODOLOGY

The Mississippi Workers' Compensation Commission (MWCC) is an Agency of the State of Mississippi located in Jackson, Mississippi. The Commission was established by Miss. Code Ann. §71-3-85. The Commission consists of three members appointed by the Governor, with one of these Commissioners serving as Chairman. The Chairman is the administrative head of the Agency.

On November 18, 2003, the Joint Legislative Committee on Performance Evaluation and Expenditure Review (PEER) published a report which questioned a number of aspects of the operations of the agency, including:

- ► Insufficient management oversight of the agency.
- ► Responsibilities of Commissioners not equitably divided.
- ► Commissioners assisting Administrative Judges in preparing Orders.
- ► Commissioners and employees of the agency not properly accounting for leave used.

Among the recommendations made in the PEER report was that the State Auditor "should conduct an audit of MWCC's leave records to ensure that the commissioners (as well as all other employees) have properly accounted for their time away from MWCC offices. Should the State Auditor determine that the commissioners have not complied with the state's leave laws by taking leave for days in the past on which they were absent, he should recommend that the commission take appropriate corrective action." Additionally, the PEER report recommended that "Within six months, the State Auditor should conduct a follow-up audit and consider taking appropriate legal actions provided in Miss. Code Ann.

§7-7-211 if the commissioners have not claimed leave for their time away from the MWCC office for personal and non-business reasons."

The Audit Response Team of the Office of the State Auditor was assigned to perform this work at the MWCC. It was decided the scope of this work would include:

- Analyzing the MWCC's system for accounting for time worked and leave taken by Commissioners and employees.
- Evaluate the effectiveness of this system.
- Gathering information about other problems that were brought forth in the PEER report.

The analysis of the time and leave accounting system of the MWCC was performed in two steps. The first step was to obtain any documented policies and procedures currently in use for Commissioner and employee time and leave accounting. If none were available, the practices currently in use were to be explained to us and documented. The second step for analyzing the time and leave accounting system was to verify that the written policies or stated practices were being used as documented or explained.

With regard to the other matters addressed in the PEER report, interviews were conducted with appropriate personnel relating to these matters. These interviews include all three Commissioners. These matters included a workload inequity among the Commissioners, employees attending a funeral with no leave used, a secretary not being charged leave while away from work, and other matters that arose in the course of our field work.

One of the areas of concern highlighted in the PEER report dealt with a Commissioner assisting one of the Commission's Administrative Judges in preparing orders. This situation was addressed in the PEER report, and does not need to be addressed by the State Auditor.

LEGAL ISSUES

In the course of our work at the Mississippi Workers' Compensation Commission the following legal questions have arisen.

- Q Miss. Code Ann. §71-3-85 (1) states that the three Workers' Compensation Commissioners "shall devote their entire time to the duties of the office". Does this mean they are classified as full-time State Employees?
- A Miss. Code Ann. §71-3-85 (1) provides that the Worker's Compensation Commissioners "shall devote their entire time to the duties of their office." In *Bruton v. Mississippi Workmen's Compensation Commission*, 178 So. 2d 673 (Miss. 1965), the Supreme Court has noted the following: "It is evident, therefore, that the compensation act and also the Commission's rules contemplate that at all hearings the Commission as a body, or as a full commission, shall be present and shall vote. Apparently it is because of this requirement that the commissioners are **full time employees** under the Act." *Id.* at 700-01. (Emphasis added.) Therefore, based on this language and the language of the above statute, the Commissioners are classified as full-time state employees.
- Q Are the three Workers' Compensation Commissioners required to use leave, whether personal or sick, when not performing their duties? They currently accrue personal and sick leave on the State SPAHRS System.
- A Miss. Code Ann. §25-3-91 provides definitions for the vacation and sick leave statutes. An employee is defined as "a person appointed to a position in the state service or nonstate service as defined in Section 25-9-107, for which he is compensated on a full-time

permanent or provisional basis, a temporary basis, or a part-time basis." A Commissioner would fit within the definition of an employee for the purpose of the leave statutes.

The Attorney General has opined that the Commissioner and Deputy Commissioners of Corrections are within the meaning of the term "employee" of this section. AG Op., Anderson, May 8, 1998. In addition, the Attorney General has opined that the Commissioner of Public Safety is a full-time employee, and is required to perform the duties of that position on a full-time basis. Therefore, the Commissioner must use personal leave when not performing his or her job duties during a work day or for a missed work day. AG Op., Dixon, January 7, 1992.

Based on these statutes and opinions, the Worker's Compensation Commissioners are required to use leave, whether personal or sick, when not performing their duties.

Q. In its report dated November 18, 2003, PEER questioned one of the Commissioners conducting educational conferences and training away from the Commission office, and thus being away when Commission hearings have taken place. The report stated that "While state law requires the commission to adopt and publish detailed rules and regulations for implementing the state's workers' compensation laws, no specific requirement exists that the commission conduct educational efforts regarding such." This Commission's five year strategic plan specifically includes this type of training, and we are told it is specifically included in the agency's budget. PEER recommended this training be conducted by an employee of the agency, rather than a Commissioner, and that the full Commission approve this activity. Is there authority for this training, and should the full Commission approve it?

A. Bruton v. Mississippi Workmen's Compensation Commission, 178 So. 2d 673 (Miss. 1965), provides that "the [Workers' Compensation] Act apparently contemplates that all three commissioners must sit, be the triers of fact, and hand down the necessary orders in all compensation cases." Id. at 701. However, Miss. Code Ann. §71-3-85 (2) provides that if one member is absent from the meeting, the remaining two members have the authority to act. Therefore, if one of the commissioners is unable to attend a commission meeting, the remaining two commissioners are able to fulfill the commission's duties and responsibilities, as long as the two commissioners are able to agree upon the action to be taken. See Bruton, supra, 178 So. 2d at 701.

Miss. Code Ann. §71-3-85 (3) provides that the "commission shall have the powers and duties necessary for effecting the purposes of this chapter, . . . and the power to adopt rules and regulations and make or approve the forms relating to notices of injuries, payments of claims, and other purposes. . . ." Section 71-3-93 provides that the "commission shall appoint such officers and employees as are necessary adequately to administer the Worker's Compensation Law" The commission may adopt rules to provide for its stated goal in its five-year strategic plan pursuant to §27-103-155 of extending its information outreach through participation in educational conferences and programs. However, the commission may give such duties to an employee of the commission. The commission should make a determination as to whether granting such responsibilities to an employee would be in the best interest of the commission.

Q. We have been told by the other two Commissioners that Commission Chairman Ben Smith does not include them in administrative matters of the Commission. Miss. Code Ann. §71-3-93 states "The commission shall appoint such officers and employees as are

necessary adequately to administer the Workers' Compensation Law". How should personnel matters be properly approved?

A. Miss. Code Ann. §71-3-85 (1) provides that the "chairman shall be the administrative head of the commission and shall have the final authority in matters relating to assignment of cases for hearing and trial and the administrative work of the commission and its employees, except in the promulgation of rules and regulations wherein the commission shall act as a body, and in the trial and determination of cases as otherwise provided." Miss. Code Ann. §71-3-93 states that the "commission shall appoint such officers and employees as are necessary to administer the Workers' Compensation Law . . . and an executive director who shall serve at the will of the commission and shall have such administrative duties as are assigned by the commission"

The Workers' Compensation Law does not clearly set out the meaning of "the administrative work of the commission and its employees." To avoid confusion in this matter, the commission as a body should set forth the rules and regulations for the handling of administrative matters such as personnel, including whether the chairman or the executive director shall be responsible for the handling of personnel matters. The executive director is responsible for only such duties as are assigned to him or her by the commission as a body.

Q Chairman Smith told us that he has not required Administrative Judges and Court Reporters, all of whom report directly to him, to account for their time because he considers them to be "professional employees". In January 2004, he has begun making the Judges complete a weekly activity report. What, if anything, is required to be reported by these individuals? What are the minimum requirements for reporting time, leave, etc.?

A. The Attorney General has opined that the annual appropriation bills for the Worker's Compensation Commission directs that they be expended "in compliance with the policies established by the State Personnel Board and conditions placed on such expenditures" and that the commission must abide the personnel rules and regulations of the State Personnel Board rather than its own rules. AG Op., Minor, April 7, 2000. The commission should contact the State Personnel Board and determine what is required to be reported by these individuals.

FINDINGS AND RECOMMENDATIONS

As a result of our work performed at the MWCC, we present the following findings and recommendations:

1. <u>Finding</u> -The MWCC does not have written policies and procedures for accounting for time and leave for it's Commissioners or employees. Separate practices have existed for different divisions within the Commission, but no written policies and procedures are currently in place. There are draft policies and procedures awaiting approval by the Commission.

Recommendation - The MWCC should adopt written policies and procedures for accounting for Commissioners and employees time and leave. Further, we recommend a system of positive time reporting where work performed is documented and approved by an individual's supervisor. If the Commission deems necessary, the Office of the State Auditor is available for technical assistance.

Finding - None of the three MWCC Commissioners currently report leave taken. The State Auditor's position is that they are full-time employees.

<u>Recommendation</u> - All three MWCC Commissioners should report leave taken.

3. <u>Finding</u> - The MWCC has taken personnel actions without the approval of the full Commission as required in Miss. Code Ann. §71-3-93. Based upon interviews of Commissioners Schobey and Quarles, it appears that Commission Chairman Smith has acted alone in personnel decisions.

Recommendation - As required in Miss. Code Ann. §71-3-93, the full Commission should "appoint such officers and employees as are necessary adequately to administer the Workers' Compensation Law".

4. <u>Finding</u> - It has come to our attention that Administrative Judges and Court Reporters employed by the Commission sometimes have no work to perform due to settlements and cancellations of hearings. These employees have been given permission to remain away from the Commission Office in many instances.

Recommendation - We recommend the Commissioners analyze the staffing requirements with regard to Court Reporters to see if some money could be saved by contracting out these services.

EXIT CONFERENCE

On February 2, 2004 an exit conference was held at the MWCC Office in Jackson, Mississippi. Present at this conference were MWCC Commissioners Ben Barrett Smith, Lydia Quarles and Barney Schobey. Also present at this conference were representatives of the Attorney General's Office and the Office of the State Auditor.

In this conference, the findings of the Audit Response Team were communicated to the three Commissioners. The Commissioners indicated that they would address these issues. It was agreed that follow-up work would be performed by this agency in about six months to evaluate their progress.